

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

TERRY'S LINCOLN MERCURY, INC.  
D/B/A TERRY'S BODY SHOP-  
COLLISION CENTER

and

Case 13-CA-40863

AUTOMOBILE MECHANICS LOCAL NO.  
701, INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE  
WORKERS, AFL-CIO

*Jessica Willis Muth and Sylvia L. Taylor, Esqs,*  
for the General Counsel.  
*Michael I. Richardson and Kyle B. Johansen, Esqs.,*  
(*Franczek Sullivan, PC*), of Chicago, IL,  
for the Respondent.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: On February 25, 2003 and February 27, 2003, a charge and first amended charge in Case 13-CA-40863 were filed against Terry's Lincoln Mercury, Inc., d/b/a Terry's Body Shop – Collision Center, Respondent herein, by Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO, Union herein.

On June 2, 2003 the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint alleging that Respondent, during a union organizing campaign, violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein the Act, when it discharged three employees and when it unlawfully interrogated employees, solicited grievances, and threatened employees because of their union activities and to discourage the employees from supporting the union.

Respondent filed an answer in which it denied that it violated the Act in any way.

A hearing was held before me on April 12 and April 13, 2004 in Chicago, Illinois.

Upon the entire record in this case, to include post hearing briefs submitted by Counsel for the General Counsel and Counsel for Respondent and giving due regard to the testimony of the witnesses and their demeanor, I make the following

## I. Findings of Fact

At all material times Respondent, an Illinois corporation, with an office and place of business in Frankfort, Illinois, has been engaged in the business of body repair of automobiles and trucks.

Respondent admits, and I find, that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. Labor Organization Involved

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

### A. Overview

The body shop is part of Terry's Automotive Group, which, in February 2003, consisted of the body shop in Frankfort, Terry's Lincoln Mercury in Orland Park, Terry's Ford Lincoln Mercury in Peotone, Terry's Hyundai in Tinley Park and Terry's RV and Truck Center in Frankfort. Terry Kunes is the owner of Terry's Automotive Group, and David Corradino is the Controller and Vice President. Bob Mueller is the General Manager of the body shop and Gary Carter is the General Manager of Terry's RV, which is located in the same building as the body shop. In February 2003, Robert Capriotti was the Operations Manager at the body shop and reported to Mueller.

The body shop is in the business of automotive repair and generally repairs damaged cars, light trucks, motor homes and travel trailers. At the time of the hearing, the body shop employed five (5) body shop technicians or "bodymen", three (3) painters, two (2) porters, a general manager, production manager and receptionist. The body shop receives work from the Group, insurance companies and the general public. Generally speaking two body techs or body men did enough work to keep one painter busy.

In November 2002 some employees from the body shop sought out the Union to represent them in collective bargaining. The Union, through Union Representative David Mullin, wanted a showing of interest by a majority of the employees in the body shop. After several meetings between Mullin and a group of employees, Mullin had a petition on February 18, 2003 signed by a majority, i.e., 8 out of 10 of the employees in the body shop, expressing their wish to be represented by the Union.

On February 19, 2003 Mullin filed a representation petition with Region 13 requesting an election by the Board and also met at the body shop with Manager Bob Mueller and demanded recognition based on majority support which Mullin was willing to have verified to Respondent's satisfaction by a neutral third party, i.e., a person selected by the Union and Respondent who could compare known signatures of employees with the signatures on the petition seeking union representation. Mueller would not recognize the Union. Mullin did not let Mueller know which employees had signed the petition seeking representation. There is no evidence that Respondent knew that some of its employees had been meeting with the Union or which of its employees had signed the petition.

The very next day, February 20, 2003, Respondent fired three employees, i.e., two body men, William Orshonsky and Ron Vinicky, and one painter, Ron Santoro.

On the day after the three discharges, February 21, 2003, Respondent's owner Terry Kunes spoke to the employees at a meeting and it is alleged, and I find, that he unlawfully interrogated, solicited grievances, and threatened the employees because of their union activity and to discourage employees from supporting the Union.

On April 11, 2003 a Board conducted election was held. All the votes were in favor of representation by the Union and the Union was certified as the exclusive collective bargaining representative of the employees in the body shop after Respondent unsuccessfully challenged the results of the election.

On February 23, 2004 the parties entered into a collective bargaining agreement effective from February 1, 2004 to January 31, 2007.

#### B. The Discharges of William Orshonsky, Ron Vinicky, and Ron Santoro

My decision regarding the legality of the discharges is governed by the Board's landmark *Wright Line* decision.<sup>1</sup> Suffice it to say the General Counsel made out a prima facie case that the three employees were discharged because of their union activity or to discourage support for the Union. There is no evidence that Respondent knew which of its employees signed the petition seeking representation but a combination of the General Counsel proving union activity by the three men, coupled with the timing of the discharges just one day after the Union demands recognition, and the unlawful statements made the day after the discharges by Respondent's owner Terry Kunes persuade me that the General Counsel made out a prima facie case. See Section III, C, below for a discussion of Terry Kunes' statements to employees on February 21, 2003. Orshonsky, Vinicky, and Santoro had all signed the petition seeking union representation prior to the Union demand for recognition.

Once the General Counsel has proven a prima facie case the burden then shifts to Respondent to show that it would have discharged the employees even in the absence of union activity. I believe Respondent has met its burden. Respondent put on a persuasive case that because of its financial situation it had cause to discharge some employees and chose these three men for discharge several days before Respondent first became aware of union activity at the body shop.

Since two body men can keep one painter busy Respondent selected for discharge two body men and one painter. One of the body men, William Orshonsky, was selected because he had the lowest seniority among the body men who worked in the shop. Painter Ron Santoro was selected because he was the painter with the lowest seniority. And lastly body man Ron Vinicky was selected for discharge based on performance problems, i.e., five vehicles had been returned to the shop for rework in a four-month period. A sixth vehicle was later returned but after Vinicky was terminated. Significant to me is the fact that Respondent, after discharging Orshonsky, Vinicky, and Santoro on February 20, 2003, had not hired any new body men or painters at least as of the time of the trial in this case on April 12 and 13, 2004, almost 14 months after the discharges. General Manager Bob Mueller told the three men they were discharged because of economic reasons but could apply to be rehired if business picked up.

<sup>1</sup> *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 US 989 (1982).

5 The three men who were discharged, i.e., Orshonsky, Santoro, and Vinicky testified that they were busy at work and that others working in the body shop were also busy. Dan Davia and Jeff Davidson also testified that they had work to do as did their fellow employees. All five men, however, conceded that they were not privy to Respondent's financial records and really didn't know the details of Respondent's financial health or whether Respondent was profitable or not.

10 Respondent put on an impressive case that its financial situation warranted a reduction in its employee complement. Respondent's economic difficulties stemmed in part from competition, i.e., a new body shop, Central Collision, opened near Respondent and in part because of the general state of the economy.

15 The body shop fell on hard times beginning on September 11, 2001. From 2001 through February 2003, the body shop operated at a loss. In 2001, the body shop lost \$67,000. In 2002, the body shop's losses almost doubled to \$115,000; and through January and February 2003, the body shop lost \$8,878. Due to the decline in business, the body shop was also suffering from a decrease in the number of hours sold to customers, which had a negative impact on the body shop's profitability. In January 2003 the body shop sold 2360 hours to customers; in February that total dropped by almost 400 hours to 1982. In March 2003, the body shop sold 1427 hours, which was over 500 fewer hours than it sold in February 2003. From January through March 2003, the body shop also suffered a decline in sales. Sales decreased from \$198,000 in January 2003 to \$112,000 in March 2003. The number of jobs completed by the body shop also decreased from 138 in January 2003 to 99 in March 2003.

25 Also during this time, Terry's Automotive Group was receiving pressure from its bank that provides financing for all the new cars it sells at the dealerships. Because the Group had not been profitable, the dealerships were in violation of their loan agreement with the bank. As a result, the line of credit the bank extended to the dealerships to purchase new cars was reduced from \$22 million to \$13 million. The bank threatened to pull its financing altogether if the Group did not become more profitable. Therefore, Respondent thought it essential that the Group cut costs and increase profits because if the Group lost its line of credit, the dealerships would be out of business.

35 In 2002, the Group took steps across the board to cut costs and increase profits. The Group reduced its operating expenses from 2000 to 2003 by over \$100,000 per month by cutting staff. Personnel were cut at Terry's Lincoln Mercury and Terry's Hyundai. Specifically, a general manager position was eliminated at Terry's Hyundai and two (2) to three (3) mechanics at Terry's Lincoln Mercury were let go. The Group also reduced the office space in all of the dealerships and required that two employees share each office. Eventually, the Group was forced to sell Terry's Hyundai because of adverse business conditions.

45 The body shop also took steps to cut costs. The body shop cut Capriotti's commissions by 50% in or about September 2002 and eliminated a secretarial position in early 2003. Also, Capriotti was eventually terminated and replaced with an employee earning significantly less money. However, these cost-cutting measures were not sufficient.

50 I credit the testimony of Collision Center Manager Bob Mueller and owner Terry Kunes that Respondent's top management discussed discharging employees in the body shop prior to the Union demand for recognition on February 19, 2003. More specifically Bob Mueller decided on February 17, 2003 to discharge Orshonsky, Vinicky, and Santoro. Again, Orshonsky and

Santoro were selected to be let go because they were the body man and painter with the least seniority. Vinicky was selected because of performance problems.

5 Vinicky's performance problems were several in number. In late November 2002, Vinicky was assigned to perform repair work on an automobile that had been involved in an accident. Vinicky was required to place the frame of the vehicle on a machine to pull the frame back into shape. Vinicky worked on the frame for a few hours and was unable to properly make the repair. Mueller told Vinicky to keep working on bending the frame back into shape. Later, Vinicky returned to Mueller and told him that the frame was repaired. Mueller sent the vehicle to the Service Department at Terry's Lincoln Mercury to have the steering of the vehicle properly aligned.

15 The Service Department called Mueller and told him that they could not align the steering on the vehicle because the frame was torn. Mueller had the vehicle returned to the body shop, showed Vinicky the torn frame and asked him how he could have missed the torn frame. Vinicky shrugged his shoulders and told Mueller that he never saw the tear. Mueller instructed Vinicky to be more careful.

20 It was Vinicky's job to ensure that the frame was intact and properly repaired before it left the body shop. It would be unsafe for a customer to drive a vehicle with a torn frame because the driver could lose steering in the vehicle. Because Mueller considered Vinicky's error to be severe and a potential safety risk to the customer, he prepared a note describing the incident and placed it in Vinicky's personnel file.

25 In mid-December 13, 2002, Vinicky was assigned to work on a vehicle where the customer complained that there was a noise in the rear end of the vehicle. After working on the vehicle, Vinicky was unable to diagnose the problem. As a result, Mueller had to send the vehicle to Terry's Hyundai so that their technicians could diagnose and correct the problem. However, the customer brought the vehicle back to the body shop three times, complaining of the same noise.

30 Finally, Mueller inspected the vehicle and noticed that a bolt was loose in the rear end of the vehicle that held the rear suspension in place. Mueller determined that the loose bolt caused the noise the customer was complaining of in the rear end of the vehicle. Mueller brought Vinicky over to look at the vehicle, told him what the problem was and instructed Vinicky to tighten the loose bolt. Mueller felt that Vinicky should have been able to diagnose and repair the problem when the customer first brought the vehicle to the body shop. Mueller considered Vinicky's failure to properly diagnose and repair the vehicle to be a safety threat to the customer. Mueller prepared a note describing the incident and place it in Vinicky's personnel file.

35 On December 31, 2002, Vinicky was assigned to work on a vehicle where the customer complained about engine noise. During the repair, Vinicky removed the fuse box and ground wire. During the first week of January 2003, the customer returned the vehicle to the body shop, complaining that when he applied the brake, the turn signals would go on. Vinicky told Mueller that he did not know what the problem was he was not being paid for the work because it was a comeback and that Mueller should send the vehicle to Terry's Lincoln Mercury. Mueller considered this comeback to be a safety risk to the customer and prepared a note describing the incident and placed it in Vinicky's personnel file.

50 On or about February 12, 2003, Vinicky was assigned to repair a vehicle that had sustained damage to the side doors. The body shop ordered new doors for the vehicle,

however, Vinicky installed the incorrect doors on the vehicle. The doors Vinicky removed from the vehicle had holes in the bottom of the door to attach the side moldings. However, Vinicky failed to check the new doors to ensure the doors he was installing on the vehicle were the same type of doors that he removed from the vehicle. The doors Vinicky installed on the vehicle did not have holes for the molding, and therefore, Vinicky was unable to attach the molding to the doors after the doors were installed. When Mueller confronted Vinicky about installing the incorrect doors, Vinicky complained that it was not his fault. As a result of Vinicky's mistake, the body shop was forced to purchase new doors for the vehicle, at a cost to the body shop of \$600. Mueller prepared a note describing the incident and placed it in Vinicky's personnel file.

In early February 2003, Vinicky was assigned to repair a vehicle where he had to replace the hood on the vehicle. However, Vinicky did not properly reinstall the hose that disperses windshield washer fluid on the windshield of the vehicle. Vinicky reinstalled a broken clamp on the vehicle and, as a result, the washer fluid did not disperse on the windshield, but rather leaked into the engine. The customer was forced to bring the vehicle back to the body shop to have the vehicle properly repaired. Because he considered this to be a safety issue, Mueller prepared a note describing the incident and placed it in Vinicky's file.

Mueller did not know whether Orshonsky, Santoro, or Vinicky had even signed the union petition Union Representative Dave Mullin referred to when he demanded recognition. The petition was not shown to Mueller according to both Mueller and Mullin. Mueller's testimony that the decision to discharge Orshonsky, Vinicky, and Santoro was made prior to any knowledge of union activity is corroborated by witness Gary Carter, who testified he was told by Mueller prior to the union demand for recognition that he was letting some people go because of business conditions. Although Carter is a management official within Terry's Automobile Group I nevertheless found him to be credible as I found Mueller to be credible. Financial records corroborate their testimony.

Daniel Corradino, Vice President and Comptroller with authority over the several businesses owned by Terry Kunes to include the body shop, which is the subject of this litigation, credibly testified and was corroborated by financial records. He is responsible for all the financial reporting and it was the financial records that supports Respondent's defense.

Since I find that the decision to terminate employees at the body shop was made prior to the Union demand for recognition although not announced until the next day and that the lay off was economically motivated based on financial records which corroborate the testimony of owner Terry Kunes and manager Bob Mueller I find that the Act was not violated when Orshonsky, Santoro, and Vinicky were terminated. The three were selected for termination for reasons that were non discriminatory and their termination had nothing to do with the union activity at the body shop.

### C. Section 8(a)(1) Allegations

It is alleged that Respondent's owner, Terry Kunes, on February 21, 2003, two days after the Union demand for recognition and one day after the three discharges, violated Section 8(a)(1) of the Act in statements he made at a meeting with employees.

The witnesses for General Counsel on this issue were two body men, Dan Davia and Jeff Davidson. Both men testified pursuant to subpoena and were still working for Respondent when they testified before me. I found them very credible. The fact that both men testified against the interests of their current employer gives me great confidence in crediting their testimony. See, *Mar-Jam Supply Co.*, 337 NLRB 337 (2001).

In pertinent part Dan Davia, who has worked for Respondent since January 1999 testified as follows:

5                   “Q.     And can you tell us what Terry [Kunes] said at that meeting?

                  A.     He wanted to know why we wanted a union, what our complaints were. You know, he was just pretty much that, you know.

10                  Q.     Do you recall him saying anything else at the meeting?

                  A.     He asked if we had elected a spokesperson, if anybody was the — and he, again, asked us if we —

15                  Q.     Are you having problems remembering? Would anything refresh your memory?

                  A.     Yeah, I’m a little nervous.

20                  Q.     That’s okay. Would anything refresh your memory?

                  A.     Probably my affidavit.

25                  Q.     I’ll show you what has been marked for identification as GC Exhibit —

                              ADMIN. LAW JUDGE LINSKY: There’s no 9 marked as yet.

                              MS. MUTH: Right, we’re going to mark some things.

30                  ADMIN. LAW JUDGE LINSKY: Okay. So this is what now?

                              MS. TAYLOR: 13.

35                  ADMIN. LAW JUDGE LINSKY: GC 13.  
(Whereupon, General Counsel’s Exhibit No. 13 was marked for identification and received into evidence.)

40                  Q.     BY MS. TAYLOR: I’d like to show you what has been marked for identification as General Counsel’s Exhibit 13.

                              Do you recognize this document?

                  A.     Yeah.

45                  Q.     What is it?

                  A.     It’s that sworn statement, my statement.

50                  Q.     Okay. Can you please read it to yourself?

                              ADMIN. LAW JUDGE LINSKY: How long will you need to read that, sir?

THE WITNESS: Not long.

ADMIN. LAW JUDGE LINSKY: Ten minutes? Five minutes?

5 THE WITNESS: Not even that long.

ADMIN. LAW JUDGE LINSKY: Okay, we'll go off the record for five minutes to give the witness a chance to read this. (Off the record).

10 ADMIN. LAW JUDGE LINSKY: Ms. Taylor?

Q. BY MS. TAYLOR: Do you now remember what occurred at that meeting with Terry Kunes?

15 A. Yeah.

Q. May I have the statement back, please? Okay, Mr. Davia, can you tell me what Terry said during that employee meeting?

20 A. Yeah, if the union came in or if the union cost him anything it was going to come out of the Body Shop in terms of heat and equipment and lighting.

Q. Did he say anything else?

25 ADMIN. LAW JUDGE LINSKY: Repeat that again. What did he say?

THE WITNESS: He said if the union came in, if we got the union in, it would come out of the Body Shop in terms of equipment, lighting and heat.

30 ADMIN. LAW JUDGE LINSKY: Thank you.

THE WITNESS: He actually said if the union came in that maybe we didn't a body shop that size.

35 Q. BY MS. TAYLOR: Now, you mentioned that before he asked about a spokesperson. Is that correct?

A. Yeah.

40 Q. And did anyone respond when Mr. Kunes asked about a spokesperson?

A. No.

45 Q. Do you recall if he ever mentioned anything with regard to your 401K plan?

A. Yeah, he actually said that that money would disappear if the union came in. We would no longer have a 401K.

50 Q. Did he say anything else?

A. He said that he thought that, he had an open door policy there with the employees and if the union came in that we would no longer be able to speak



directly to management, that we'd have to go through the union.

Q. Did he mention anything about phone calls or car washes?

5 A. Yeah, we'd be losing —

ADMIN. LAW JUDGE LINSKY: Is this in the affidavit.

MS. TAYLOR: Yes.

10

ADMIN. LAW JUDGE LINSKY: I'll permit it.

THE WITNESS: That we'd be losing other benefits that we had like personal phone calls, we used to be able to wash our cars there or work on our cars after hours. We wouldn't be able to do any of that stuff.

15

Q. BY MS. TAYLOR: And did he mention anything with regard to grievances?

MR. RICHARDSON: Objection again. It's leading.

20

ADMIN. LAW JUDGE LINSKY: Overruled.

Q. BY MS. TAYLOR: He didn't mention anything with regard to grievances?

25

A. Well, he said that he thought they had an open door policy with the employees, that, but if the union came in we wouldn't be able to talk to management any more. We'd have to go through the union.

Q. Did you say anything about the union during this meeting, Mr. Davia?

30

A. Well, he kept on asking as about, he asked us about the, you know, why we wanted a union. And I told him that we wanted it for a better health plan and, you know, we wanted to be represented by a union.

35

Q. Did you say anything in this meeting about the employees who had been terminated?

A. He asked or I asked him, you know, why, you know, he let the three guys go. If work was slowing down, why let three guys go? Why couldn't we go on like a four day, you know, four day week instead of just terminating three guys.

40

Q. Did he respond to your comment?

A. He said that they had been thinking of downsizing and he said just forget about those guys. They're gone." (Transcript pp. 120-124).

45

In pertinent part Jeff Davidson testified as follows:

"Q. Are you testifying pursuant to a subpoena?

50

A. Yes.

Q. Are you familiar with Terry's Collision Center?

A. Yes.

5 Q. And why are you familiar with Terry's?

A. I work there.

10 Q. When did you begin working for Terry's?

A. April 15th, 2002.

Q. And what's your job position at Terry's?

15 A. Body and fender technician.

Q. Are employees of Terry's currently represented by a union?

A. Currently, yeah.

20 Q. Which is that?

A. Local 701.

25 Q. Are you a member of that union?

A. Yes." (Transcript p. 132).

— — —

30 "Q. Now, drawing your attention to the day after those three were terminated, February 21st, 2003, did your report to work that day?

A. Yes.

35 Q. What, if anything, happened at work that day?

A. That's when Terry stopped by that day.

40 Q. And who's Terry?

A. He's the owner.

Q. Okay, what happened?

45 A. He came back basically wanted to have a little meeting with everybody and told us he wanted to talk union with us.

Q. Okay.

50 A. He was asking us, you know, why we wanted the union. What the union was going to do for us. You know, if we had any, what were our complaints,

what were our problems. What do we want? Kept asking us about all that. Told us, you know, if the union gets in here that, you know, it's not going to come out of his pocket, it's going to come out of the body shop, whatever it cost for the union to get in here because we didn't need a shop this size. You know, all the updated equipment. We didn't need none of that. You know, there would be no more talking directly to the bosses. You'd have to go through the union. No more personal favors. Can't wash your car. No personal phone calls. Nothing like that. And he just kept asking us what our complaint is with the union. What did we want the union for, you know?

Just kept going on and on. Told us, you know, he's going to take things away from us like 401K. We wouldn't get that no more if the union was there. No personal phone calls. No stuff like that. And just, you know, basically he was telling us that it wasn't going to be the same. No open book (sic) policy. If we wanted to talk to the management we had to go through the union. You know, no more favors, no nothing like that basically.

Q. Did he say anything about the rules? Work rules?

A. Yeah, strictly by the book. If you want the union, it would be strictly by the book. If you wanted something, if you were late, you'd get written up. Four write-ups and you were gone. You know, he just kept going on." (Transcript 137-138).

Based on the credited testimony of Davia and Davidson I find that Respondent violated Section 8(a)(1) of the Act by unlawfully interrogating employees about their union activity, solicited grievances to discourage employees from supporting the union, and threatened employees in several ways, i.e., loss of 401K benefits, personal phone calls, free car washes, downsize of operations and the imposition of more onerous working conditions. See, *Logo 7*, 284 NLRB 204, 205-206 (1987). I am, of course, mindful of the fact that the mandatory meeting took place just one day after three men who signed the union petition had been terminated. See, *Rossmore House*, 269 NLRB 1176 (1984).

Some of these findings are corroborated by the testimony of owner Terry Kunes himself. He testified in pertinent part as follows:

“Q. Do you recall when you met with employees following learning of the union?

A. I really can't tell you the date. But I can say that I, it was shortly after I heard that they were, you know, considering union, being represented by a union.

Q. During that meeting did you ask employees about the problems that led them to consider a union?

A. Yes, I did. I, I, I would have asked them that cause that's way I think.

Q. Okay. Did you know at the time that the labor board considers that kind of questioning to be unlawful?

A. No, I did not.

Q. Did you intend to coerce anyone by those questions?

A. Not at all.

5 Q. Did you intend to threaten anybody by that?

A. Not at all.

10 Q. What was your purpose?

A. I wanted to know why, why they thought they needed representation. What had we missed in management. What were we not doing that they thought needed to be done. Did we deny them anything that that they thought they should have.

15 And that, that was really it. Did they, you know, what does the union offer that, that they don't have today.

20 Q. Did you talk to employees about the pros and cons of a union contract?

A. I don't think I did.

25 Q. Did you ever threatened to take away their benefits in their 401K because of the union?

A. No.

30 Q. Did you say anything about a 401K?

A. I do remember talking, ask, at, there was some concern about retirement and they, their statement was that the union offered them a retirement benefit they didn't have.

35 And I asked them why the majority of them were not in our 401K plan.

Q. Did you threaten to downsize the business because of the union?

40 A. If I were going to downsize the business it'd be because we had a lack of business.

Q. You didn't make that threat?

A. No.

45 Q. Did you threaten to take away tools and equipment if the union cost you money?

A. No.

50 Q. Did you talk to people about the work rules under a union contract? Tell them you'd have to stick by the book?

A. Well, I, I did state that if, if, that we would stick by the book. That, that's the purpose. If they wanted, if they, if they elected to be represented by a union the book is the rule book.

5 Q. Did you tell them that?

A. I, I would imagine I would have brought it up cause that is the way I think. You know, we, as a non union shop we work by the rules we establish amongst ourselves.

10 Q. Have you had union shops before?

A. I did.

15 Q. When was that?

A. I had a Buick dealership in Blue Island, Illinois. I think I sold that in '94 and that was a union shop.

20 Q. Did you ever have any problems with the union?

A. Never.

25 Q. When you had your meeting did you tell employees they could no longer wash their cars or use their phones if the union was present?

A. I don't think I would have said that.

30 Q. At any time did you interrogate employees about their union activity?

A. No.

Q. Did you ask them who was for the union?

35 A. No.

Q. Do you have any idea who was for it or against it?

40 A. I really don't. I, I know that Dan Davia told me that he was for the union and primarily because of retirement." (Transcript pp. 211-214).

45 Insofar as there are conflicts between the testimony of Davia and Davidson on the one hand and Kunes on the other hand I credit Davia and Davidson. As current employees of Respondent their testimony critical of Respondent is more persuasive. I also note that Kunes when asked about the employees no longer being able to wash their cars or use the phone if the Union was present testified "I don't think I would have said that."

#### Remedy

50 The remedy in this case should include a cease and desist order and the posting of an appropriate remedy.

## Conclusions of Law

1. Respondent, Terry's Lincoln Mercury, Inc. d/b/a Terry's Body Shop-Collision Center, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union, Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act when it interrogated employees about their union activities and the union activities of other employees, when it solicited employee grievances and complaints in order to discourage employees from supporting the union, when it threatened to take away employee benefits to include 401(K) benefits, personal phone calls and free car washes for employees because of their union activities, when it threatened to downsize Respondent's business operations because of their union activities, and when it threatened to impose more onerous working conditions to include more strictly enforcing work rules.

4. The above violations of the Act are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record I issue the following recommended<sup>2</sup>

## ORDER

Terry's Lincoln Mercury, Inc. d/b/a Terry's Body Shop-Collision Center, its offices, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Interrogating employees about their union activities and the union activities of other employees, soliciting employee grievances and complaints in order to discourage employees from supporting the union, threatening to take away employee benefits to include 401(K) benefits, personal phone calls and free car washes from employees because of their union activities, threatening to downsize Respondent's business operations because of their union activities, and threatening to impose more onerous working conditions to include more strictly enforcing work rules because of employee union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Frankfort, Illinois, and all other places where notices customarily posted are posted, copies of the attached notice

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted.

5 Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 19, 2003.

10 (b) Within 21 days after service by the Region file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

15 Dated, Washington, D.C. , July 16, 2004

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Martin J. Linsky  
Administrative Law Judge

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50 <sup>3</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT interrogate employees about their union activities and the union activities of other employees.

WE WILL NOT solicit employee grievances and complaints in order to discourage employees from supporting the union.

WE WILL NOT threaten to take away employee benefits including 401(K) benefits, personal phone calls and free car washes for employees because of their union activities.

WE WILL NOT threaten to downsize Respondent's business operations because of their union activities.

WE WILL NOT threaten to impose more onerous working conditions upon employees by more strictly enforcing work rules because of their union activities.



WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal Law.

TERRY'S LINCOLN MERCURY, INC. D/B/A  
TERRY'S BODY SHOP-COLLISION CENTER

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

200 West Adams Street, Suite 800, Chicago, IL 60606-5208

(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (312) 353-7170.